

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1902.

No. 1068.

72

No. 2, SPECIAL CALENDAR.

FRANCIS J. KIECKHOEFER, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 2, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1902.

No. 1068.

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In the Court of Appeals of the District of Columbia.

FRANCIS J. KIECKHOEFER, Appellant, }
vs. } No. 1068.
THE UNITED STATES.

a Supreme Court of the District of Columbia.

THE UNITED STATES }
vs. } No. 21451, Criminal Doc.
FRANCIS JULIUS KIECKHOEFER.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 & 2 *Order Allowing Special Appeal.*

Filed Feb. 5, 1901. J. R. Young.

In the Court of Appeals of the District of Columbia, January Term, 1901.

FRANCIS J. KIECKHOEFER, Petitioner, } No. 86, Original Docket.
vs. } Nos. 21450 and 21451,
THE UNITED STATES. } Criminal Docket.

Petition for Allowance of a Special Appeal.

Upon consideration of the special circumstances of this case, but without intending to make a precedent that would be binding in all future cases, we have concluded to allow the special appeal as prayed.

By the court:

R. H. ALVEY, *Ch. Justice.*

January 22, 1901.

A true copy.

Test:

[SEAL.] ROBERT WILLETT, *Clerk.*

1—1068A

Indictment.

Filed in Open Court Oct. 4, 1897.

In the Supreme Court of the District of Columbia, Holding a
Criminal Term, April Term, A. D. 1897.

DISTRICT OF COLUMBIA, ss :

The grand jurors of the United States of America in and for the District of Columbia aforesaid upon their oath do present :

That on the second day of July, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, one Francis Julius Kieckhoefer, late of the District aforesaid, was in the service and employment of the said United States as the disbursing clerk of the Department of State of the said United States, and that the said Francis Julius Kieckhoefer then and there feloniously did embezzle divers moneys to a large amount and of great value, to wit, to the amount of eighteen thousand two hundred and twenty-nine dollars and ninety-eight cents, in the national currency of the said United States, provided, supplied, and furnished by and under the laws of the said United States, and of the value of eighteen thousand two hundred and twenty-nine dollars and ninety-eight cents, the several and respective kinds, descriptions, denominations, and values of which said moneys the grand jurors aforesaid have no means of ascertaining and therefore cannot particularly herein set forth, and which said moneys were then and there moneys belonging to the said United States and were then and there property of the said

United States, and which said moneys had been then and
4&5 there entrusted to and received by him, the said Francis

Julius Kieckhoefer, as such disbursing clerk, and had then and there come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the performance of his duty as such disbursing clerk, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

* * * * *

Fourth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present :

That on the twenty-second day of October, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, the said Francis Julius Kieckhoefer was in the service and employment of the said United States as the disbursing clerk of the Department of State of the said United States, and that the said Francis Julius Kieckhoefer then and there, to wit, on the day and year last aforesaid and at the District aforesaid, feloniously did embezzle divers other moneys to a large amount and of great value, to wit, to the amount of sixteen thousand eight hundred and thirty-

seven dollars and fifty cents, in the national currency of the said United States, provided, supplied, and furnished by and under the laws of the said United States, and of the value of sixteen thousand eight hundred and thirty-seven dollars and fifty cents, the several and respective kinds, descriptions, denominations, and values of which said last-mentioned moneys the grand jurors aforesaid have no means of ascertaining and therefore cannot particularly herein set forth, and which said last-mentioned moneys were then and there, to wit, on the day and year last aforesaid and at the District aforesaid, moneys belonging to the said United States, and were then and there, to wit, on the day and year last aforesaid and at the District aforesaid, property of the said United States, and which said last-mentioned moneys had been then and there, to wit, on the day and year last aforesaid and at the District aforesaid, entrusted to and received by him, the said Francis Julius Kieckhoefer, as such disbursing clerk as last aforesaid, and had then and there, to wit, on the day and year last aforesaid and at the District aforesaid, come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the performance of his duty as such disbursing clerk as last aforesaid, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

* * * * *

10

Seventh Count.

And the grand jurors aforesaid upon their oath aforesaid do further present:

That on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, the said Francis Julius Kieckhoefer was in the service and employment of the said United States as the disbursing clerk of the Department of State of the said United States, and that the said Francis Julius Kieckhoefer then and there, to wit, on the day and year last aforesaid and at the District aforesaid, feloniously did embezzle fifteen bonds of the said United States, each of the denomination and each of the value of one thousand dollars, which said bonds were respectively obligations of the said United States for the payment of money issued under and in accordance with the provisions of an act of the Congress of the said United States approved on the fourteenth day of July, in the year of our Lord one thousand eight hundred and seventy, and of an act of the said Congress amendatory thereof, approved on the twentieth day of January, in the year of our

11-13 Lord one thousand eight hundred and seventy-one, and which said bonds have been and are commonly known as and called one-thousand-dollar United States four per cent. coupon bonds of nineteen hundred and seven, and which said bonds were then and there, to wit, on the day and year first in this count mentioned and at the District aforesaid, respectively subsisting and unpaid obligations of the said United States, and which said bonds then and there, to wit, on the day and year first in this count mentioned and at the

District aforesaid, belonged to and were the property of the said United States, and which said bonds had been then and there, to wit, on the day and year first in this count mentioned and at the District aforesaid, entrusted to and received by him, the said Francis Julius Kieckhoefer, as such disbursing clerk as last aforesaid, and had then and there, to wit, on the day and year first in this count mentioned and at the District aforesaid, come into the possession and under the control of him, the said Francis Julius Kieckhoefer, as such disbursing clerk as last aforesaid, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

* * * * *

14

Tenth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present:

That on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, the said Francis Julius Kieckhoefer was in the service and employment of the said United States as the disbursing clerk of the Department of State of the said United States, and that the said Francis Julius Kieckhoefer then and there, to wit, on 15-17 the day and year last aforesaid and at the District aforesaid, feloniously did embezzle divers other moneys to a large amount and of great value, to wit, to the amount of five thousand five hundred and eighty-four dollars and ninety-two cents, in the national currency of the said United States, provided, supplied, and furnished by and under the laws of the said United States, and of the value of five thousand five hundred and eighty-four dollars and ninety-two cents, the several and respective kinds, descriptions, denominations, and values of which said last-mentioned moneys the grand jurors aforesaid have no means of ascertaining and therefore cannot particularly herein set forth, and which said last-mentioned moneys were then and there, to wit, on the day and year last aforesaid and at the District aforesaid, moneys belonging to the said United States, and were then and there, to wit, on the day and year last aforesaid and at the District aforesaid, the property of the said United States, and which said last-mentioned moneys had been then and there, to wit, on the day and year last aforesaid and at the District aforesaid, entrusted to and received by him, the said Francis Julius Kieckhoefer, as such disbursing clerk as last aforesaid, and had then and there, to wit, on the day and year last aforesaid and at the District aforesaid, come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the performance of his duty as such disbursing clerk as last aforesaid, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

* * * * *

18

HENRY E. DAVIS,
*Attorney of the United States in and
 for the District of Columbia.*

19 Endorsement: No. 21451. United States *vs.* Francis Julius Kieckhoefer. Embezzlement under act of March 3rd, 1875 (18 Stat., 429; 1 Rich Supp., 88). Witnesses: Edward J. Renick, Clarence L. Barnard, W. P. Armstrong. A true bill. Charles B. C. Raub, foreman.

20 *Demurrer to Indictment.*

Filed in Open Court Oct. 30, 1897.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES	}	No. 21451.
<i>vs.</i>		
FRANCIS JULIUS KIECKHOEFER.		

The defendant says that the indictment, and each count thereof, is bad in substance.

A. S. WORTHINGTON,
Attorney for Defendant.

Among the matters of law to be argued in support of the foregoing demurrer are the following:

As to each of the counts in the indictment:

1. The facts averred constitute no offense under the laws in force in the District of Columbia at the time of the alleged commission thereof or at the time of the filing of the indictment.

2. No offense is stated of which this court has jurisdiction.

3. The averments are so general and uncertain that the defendant is not informed what he has to meet or protected from another prosecution for the same supposed offense.

4. It is not set forth what person or officer entrusted the defendant with the property alleged to have been converted by the defendant to his own use, nor how it came into his possession as disbursing clerk or as Chief of the Bureau of Accounts.

5. The act of March 3, 1865, entitled "An act to punish certain larcenies, and the receivers of stolen goods," does not apply to the District of Columbia, because there is not in the District
21 of Columbia any "district or circuit court of the United States."

6. The charge that the defendant converted to his own use, in some way unknown, divers moneys that cannot be described, taken with the generality of the other averments, amounts legally to no more than a charge that there is a balance due from the defendant to the Government—an averment which might be made the basis of a civil action, but which is insufficient to sustain an indictment.

As to counts numbered 4, 5, 6, 7, 8, 9, 10, 11, and 12:

It is not averred that at the time of the alleged conversion the moneys or bonds alleged to have been converted were in the possession of the defendant by virtue of his office, either as disbursing clerk or as Chief of the Bureau of Accounts.

As to counts numbered 2, 5, 8, and 11 :

These counts aver that the defendant as Chief of the Bureau of Accounts was entrusted with and had come into the possession of moneys and bonds alleged to have been converted to his own use. There is no statute authorizing the chief of a bureau to receive, disburse, or have possession of moneys or bonds of the United States. The facts relied upon to show that the defendant was entrusted with and had possession of the moneys or bonds in question as Chief of the Bureau of Accounts should be set forth.

As to counts numbered 3, 6, 9, and 12 :

These counts are bad for duplicity in charging the defendant both as disbursing clerk and as Chief of the Bureau of Accounts, and are also bad as charging an impossibility—that the same man could hold the same money by virtue of two different offices at the same time.

22 Supreme Court of the District of Columbia.

FRIDAY, *July 15th*, 1898.

The court resumes its session pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

UNITED STATES <i>vs.</i> FRANCIS JULIUS KIECKHOEFER.	}	No. 21451. Indicted for Embezzlement under Act of March 3, 1875.
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Comes again the attorney for the United States, as the defendant, by his attorney, A. S. Worthington, Esquire; and thereupon, the defendant's demurrer to the indictment in this case coming on to be heard, after argument by counsel, it is considered by the court that said demurrer be, and it hereby is, overruled, with leave to said defendant to plead over as he may be advised.

23 *Bill of Particulars.*

Filed Apr. 6, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES <i>vs.</i> FRANCIS J. KIECKHOEFER.	}	No. 21451, Criminal Docket.
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And now comes Thomas H. Anderson, attorney of the United States in and for the District of Columbia, and, on behalf of the said United States and in compliance with the order of the court heretofore passed in the premises, files the following bill of particulars of evidence to be offered for the said United States upon the trial of the above-entitled case :

1st, 2d, 3d, 4th, 5th, 6th, 10th, 11th, and 12th Counts.

The specifications of evidence to be offered on behalf of the United States in support of the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth counts of the indictment numbered 21450 may stand and be taken as specifications of the evidence to be offered on behalf of the United States in support of the first, second, third, fourth, fifth, sixth, tenth, eleventh, and twelfth counts of the indictment number 21451 respectively.

Seventh Count.

Upon such trial evidence will be offered in support of the seventh count of the indictment tending to prove :

24 1. That on the day named in said seventh count the defendant was in the service and employment of the said United States as the disbursing clerk of the Department of State.

2. That on said day he had in his possession and under his care as such disbursing clerk fifteen subsisting and unpaid obligations of the United States, each of the denomination and each of the value of one thousand dollars, of the kind called and known as one-thousand-dollar four per cent. bonds of 1907, and which were issued under the acts of Congress mentioned in said count, and that said bonds were the property of the said United States and had come into the possession and under the care of the defendant by virtue of his said service and employment.

3. That Riggs and Company, bankers, of the city of Washington, in the District of Columbia, bought said bonds for and on account of the United States upon the order of the defendant as such disbursing clerk, and that the price of the same was paid by defendant to said bankers out of moneys of the United States entrusted to the defendant and which had come into his possession and under his care and control by virtue of his said service and employment.

4. That said bankers delivered said bonds to the defendant as such disbursing clerk, and that defendant received them on behalf of the said United States, and that, so having them in his possession, as aforesaid, he, on the day aforesaid and at said District, wrongfully and without right or authority and in fraud of the United States converted the same to his own personal and private use by making sale of the same and applying the proceeds of such sale to such use, and thereby embezzled the said bonds.

Eighth Count.

The specifications to the seventh count of the indictment, with and as qualified by the following changes therein, may stand and be taken as specifications for the eighth count, viz :

25 In lieu of the words "disbursing clerk," where they occur in the several specifications to said seventh count, insert the words "Chief of the Bureau of Accounts."

Ninth Count.

The specifications to the ninth count of the indictment, with and as qualified by the following changes therein, may stand and be taken as specifications for the ninth count, viz :

In lieu of the words "disbursing clerk," where they occur in the several specifications to said seventh count, insert the words "disbursing clerk and Chief of the Bureau of Accounts."

THOS. H. ANDERSON,
*Attorney of the United States in and
for the District of Columbia.*

26

Motion to Quash Indictment.

Filed Dec. 14, 1900. J. R. Young.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES	}	No. 21451, Criminal Doc.
vs.		
FRANCIS J. KIECKHOEFER		

The defendant moves the court to quash the indictment in this case and each and every count thereof. The grounds for this motion are :

1. As to the first, second, third, fourth, fifth, sixth, tenth, eleventh, and twelfth counts, the same as those set up as to the corresponding counts in the similar motion filed in case No. 21450 against this defendant on the criminal docket of this court.

2. As to the seventh, eighth, and ninth counts, because said counts, even as enlightened by the bill of particulars relating thereto, filed herein, do not inform the court or the defendant how the bonds described in said counts are alleged to have come into the custody of the defendant as disbursing clerk or as Chief of the Bureau of Accounts or as both such disbursing clerk and Chief of the Bureau of Accounts, and because said counts, read in connection with said bill of particulars, do not inform the defendant whether said bonds are claimed to have been part of the general property of the United States or a part of the fund arising out of "monies paid to the United States on various accounts by foreign governments," and because it is impossible, on the face of said counts and said bill of particulars relating thereto, to determine whether the alleged offense for which the United States is now prosecuting the defendant under said counts is or is not the same alleged offense which was presented to and acted upon by the grand jury in the finding of said counts in said indictment.

A. S. WORTHINGTON,
Attorney for Defendant.

27

Motion to Strike Out Bill of Particulars.

Filed Dec. 14, 1900. J. R. Young.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES	}	No. 21451, Criminal Doc.
vs.		
FRANCIS J. KIECKHOEFER.		

The defendant moves the court to strike out the bill of particulars heretofore filed in this case by the United States, and to require the United States to give to the defendant a better bill of particulars. This motion is based upon the following grounds:

1. As to the first, second, third, fourth, fifth, sixth, tenth, eleventh, and twelfth counts, upon the same grounds as those assigned in respect of the corresponding counts in case No. 21450 against this defendant on the criminal docket of this court.

2. As to the seventh, eighth, and ninth counts, because under no statute of the United States could the defendant, either as disbursing clerk or as Chief of the Bureau of Accounts or as both such disbursing clerk and Chief of the Bureau of Accounts, have in his custody or possession bonds of the United States, belonging to the United States, of the kind described in said counts respectively, and because neither in said counts respectively nor in said bill of particulars is it shown by what authority or in what way the defendant in said respective capacities or any of them became the custodian of said bonds as alleged, and because neither in said counts nor in said bill of particulars is it shown whether said bonds were a part of the general property of the United States or belonged to the fund arising out of "monies paid to the United States on various accounts by foreign governments."

A. S. WORTHINGTON,
Attorney for Defendant.

28

Supreme Court of the District of Columbia.

SATURDAY, *December 15, 1900.*

The court resumes its session pursuant to adjournment, Mr. Justice Cole presiding.

* * * * *

UNITED STATES	}	No. 21451. Indicted for Embezzlement under Act of March 3rd, 1875.
vs.		
FRANCIS J. KIECKHOEFER.		

Come as well the attorney of the United States as the defendant in proper person and by his attorney, Augustus S. Worthington, Esquire; and thereupon the defendant's motion to quash the indictment, and also his motion to strike out the bill of particulars, coming on to be heard and argued by counsel, they are submitted to the court for consideration..

Supreme Court of the District of Columbia.

MONDAY, *December* 31, 1900.

The court resumes its session pursuant to adjournment, Mr. Justice Cole presiding.

* * * * * *

UNITED STATES <i>vs.</i> FRANCIS J. KIECKHOEFER.	}	No. 21451. Indicted for Embezzlement under Act of March 3rd, 1875.
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Come as well the attorney of the United States as the defendant, by his attorney, Augustus S. Worthington, Esquire; and thereupon, the defendant's motion to quash and his motion to strike out the bill of particulars having been heretofore argued and submitted to the court, it is considered by the court that said motions be, and they are hereby, overruled.

30 In the Supreme Court of the District of Columbia.

Filed Feb. 5, 1901. J. R. Young.

UNITED STATES <i>vs.</i> FRANCIS J. KIECKHOEFER.	}	Criminal. No. 21451.
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The President of the United States to Thomas H. Anderson, Esquire, attorney of the United States in and for the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to a special appeal granted by the Court of Appeals of the District of Columbia on the 22nd day of January, 1901, wherein Francis J. Kieckhoefer is the appellant and The United States are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 5th day of February, in the year of our Lord one thousand nine hundred and one.
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JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 5th day of February, 1901.

THOMAS H. ANDERSON,
U. S. Att'y, D. C., Attorney for Appellee.

[Endorsed:] Filed Feb. 5, 1901. J. R. Young.

31 UNITED STATES OF AMERICA, } ss :
 District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 30, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 21451, criminal docket, wherein The United States is the prosecutor and Francis Julius Kieckhoefer is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, this 2d day of March,
 Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

32 In the Court of Appeals of the District of Columbia, October
 Term, 1901.

FRANCIS J. KIECKHOEFER, Appellant, }
 v. } No. 1068.
 THE UNITED STATES.

It is hereby stipulated between counsel for the respective parties that in the printing of the transcript of the record in the above cause the following parts may be omitted, viz:

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2d and 3rd counts of indictment.....	4-6
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8th and 9th counts of indictment.....	11-14
11th and 12th counts of indictment.....	16-18

It is further stipulated that upon the argument of the cause reference may be had to the original transcript as occasion may require.

A. S. WORTHINGTON,

For Appellant.

ASHLEY M. GOULD,

U. S. Att'y, D. C.,

HUGH T. TAGGART,

Ass't U. S. Att'y, D. C.,

For Appellees.

(Endorsed :) No. 1068. Court of Appeals, D. C., October term, 1901. Francis J. Kieckhoefer, appellant, *vs.* The United States. Stipulation as to printing record. Court of Appeals, District of Columbia. Filed Dec. 20, 1901. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1068. Francis J. Kieckhoefer, appellant, *vs.* The United States. Court of Appeals, District of Columbia. Filed Mar. 2, 1901. Robert Willett, clerk.